No.10- COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32 (2) (b)]

Description of Case.

A.O. No. 1578 of 2001
(Old FAFO No. 298/1999)

Oriental Insurance Co. Ltd.

Versus

Smt. Kamlesh Sharma and others.

A.F.R. (Approved for Reporting)
Not Approved for Reporting

(B.S. Verma, J.)

Date: 8-5-2006 ***Initials of Judge***

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.
A.O. No. 1578 of 2001
Old F.A.F.O. No. 298 of 1999

Oriental Insurance Co. Ltd. through its Divisional Manager,
Divisional Officer, Railway Road, Jawalapur, Haridwar.

…Appellant

Versus

1. Smt. Kamlesh Sharma Wife of late Shushil Kumar Sharma,
2. Master Mayank (minor) S/O late Shushil Kumar Sharma,
3. Kumari Prerna, D/O late Shushil Kumar Sharma,
   Residents of Malgodwon Road, Kotwar, Garhwal
   (Claimants).
4. Garhwal Mandal, Bahuudesiya Sahakari Samittee,
   Pauri Garhwal (Opposite Party)

… Respondents

Sri T.A.Khan, Adv. learned counsel for the appellant.
Sri S.S.Negi, Adv., learned counsel for the claimant-respondents.

Date May 08, 2006
P.C: Hon. B.S. Verma, J.

Heard. Grounds are sufficient to condone delay. Delay is condoned. The appeal is admitted.

This appeal under Section 173 of the Motor Vehicles Act, 1988 ***(for short the Act)*** is directed against the judgment and award dated 1-2-1999, passed by the Motor Accident Claims Tribunal/ District Judge Pauri Garhwal ***(in short the Tribunal)*** in Motor Accident Claim Petition No. 60 of 1998 Smt. Kamlesh Sharma and others Vs. Oriental Insurance Company Ltd. and others, whereby compensation of Rs.2,00,000/- has been awarded in favour of the claimants against the Insurance Company-appellant. Rider of interest was also put in case the amount of compensation is not paid within a period of one month.

Relevant facts of the case that the claimants filed a claim petition before the learned Tribunal for compensation of Rs. 20,35,000/- in respect of death of Sushil Kumar, husband of claimant no.1, aged 25 years and earning Rs. 5,000/- per month in a motor vehicle accident, which occurred on 7-4-1998 involving Bus No. UP 06-1031 due to the negligence on the part of its driver. It is alleged that the deceased was busy in repairing the vehicle and he was

crushed due to negligent driving. He was rushed to Government Hospital Kotdwara and from there he referred to better treatment, but the deceased succumbed to his injuries. The bus was owned by the O.P. No.2 and it was duly insured with the Insurance Company-appellant.

The Owner of the bus-appellant filed its written statement contending therein that the claim has been preferred on wrong facts. It was asserted that the bus was in stationary condition at the workshop. The deceased was carrying out repairs and due to his own negligence, therefore, the liability for compensation cannot be fastened upon the owner of the vehicle.

The Insurance Company, O.P.NO.1, also contested the case by filing its written statement asserting therein that the claim against the insurer has been filed on wrong fact as no cause of action has arisen to the claimant against the insurer. It was also alleged that the bus was under repairs in the garage and the death of deceased is not covered under the provisions of the Act. Quantum of compensation has also been challenged.

On the pleadings of the parties, the learned Tribunal framed necessary issues. After recording the evidence and perusing the same, the Tribunal has held that the occurrence had taken at public place and not inside the workshop. Accordingly, the petition for compensation under the Act was maintainable. It was further held that the driver of the vehicle is not a necessary party. It was also observed by the Tribunal that factum of accident and death of the deceased were not disputed. It was held that the death of the deceased was the result of the rash and negligent act on the part of the driver of the bus. Ultimately, the learned Tribunal has decreed the claim petition for compensation of Rs. 2,00,000/- and found that the vehicle was duly insured, therefore, the Insurance Company was directed to pay the compensation amount.

The impugned judgment and award has been assailed mainly on the ground that the accident occurred inside the workshop/garage and the bus was in stationary position, therefore, the finding of the Tribunal to the contrary is not tenable in the eye of law.

I have heard the learned counsel for the Insurance Company as well as learned counsel for the claimant-respondent and have perused the entire material on record including the impugned judgment and award.

The learned counsel for the appellant has contended ***firstly*** that the claim petition under the provisions of the Motor Vehicles Act was not maintainable and the claim petition ought to have been preferred under the Workmen Compensation Act. This argument of the learned counsel for the appellant is not acceptable in view of the clear provision of Section 167 pf the Act, which provides that it is open to the claimant to file a claim petition either under the provisions of the Motor Vehicles Act or under Workmen's Compensation Act. The only bar is that claim petition cannot be preferred under the provisions of both the Acts. I am fortified in my view by the Apex Court Judgment in the case of ***Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and another [2000(2) T.A.C., 213 (SC)],*** wherein it was held that the objects of the two Act, e.g. Motor Vehicles Act and Workmen's Compensation Act are not in any way different and both the two Act are to provide compensation to the victims of accidents.

Secondly, it was vehemently argued that on the basis of the evidence on record, it has been established that the bus was in stationary position and there was no negligence on the part of the driver as the vehicle was not being driven by him. This argument is a very weak stand in view of the evidence available on record. Even if it may presumed for the sake of argument that the vehicle was in stationary position, even then it does not make any difference. I am

fortified in my view by the Apex Court Judgment in the case of ***S.D.Patil and another Vs. Smt. Vatschala Uttam More [1991(2) T.A.C., Page 503].*** In that case, the Apex Court has elaborately considered the provisions of Section 92-A and Section 2(18) of the Motor Vehicles Act 1939 and it was held that the word 'use' in the context of motor vehicles construed in wider sense to include the period when the vehicle is stationary and not moving. In paragraph 13 it has been observed that ***"the expression 'use of a motor vehicle' covers a very wide field, a field more extensive than which might be called traffic use of the motor vehicle and that the use of vehicle is not confined to the periods when it was in motion or was moving and that a vehicle would still be in use even when it was stationary."***

A bare perusal of the record goes to shows that at the time of accident the bus in question was again brought for minor repairs, which were left in the bus. There is plethora of evidence on record to show that in fact the vehicle was taken away from the workshop two days before the accident and for carrying out minor defects, the bus was brought there again. On this point, there is positive evidence of Sri Sabir, who was produced as A.P.W.2 on behalf of the claimants. This witness has deposed on oath that at the time of accident, the bus was standing by the side of the road and it was not inside the workshop. Moreover, soon after the occurrence the F.I.R. was lodged by this witness. It may be noted that in the F.I.R. each and every detail of the accident are not necessary to be mentioned, rather it is meant for taking prompt action by the police in the matter. It is true that in the claim petition, the claimants have mentioned the place of occurrence as Sabir Body Maker, but at the same time it is not disputed that the deceased Sushil Kumar Sharma was employed as mechanic of Sabir Body Maker. In my view, on the ground that the place of occurrence was mentioned Workshop of Sabir Body Maker, the entire evidence led from the side of the claimants cannot be thrown out, particularly, when no evidence was led by the appellants to controvert the testimony of Sabir, who is

admittedly the proprietor of Sabir Body Maker, where the vehicle was got repaired two days prior to the date of accident. The O.P.-appellants could not dare produce the driver of the vehicle in the witness box, who was the best witness to contradict the statement of A.P.W.1, Sabir. It is evident from the record that the appellants have not led any reliable and cogent evidence to show that the bus was inside the workshop and not by the side of the road at the time of accident.

Moreover, it is not disputed that the deceased was a mechanic and he was repairing the rear lights of the bus in question. Sabir (APW-2) is the eye-witness of the accident. In view of the ocular account of the accident as narrated by this witness, who had lodged the F.I.R. of the occurrence soon after the accident, and as his testimony on the point of rashness and negligence of the driver has remained un-rebutted coupled with the testimony of APW-1, Smt. Kamlesh Sharma, who had reached the spot soon after the accident, I am of the view that the learned Tribunal has not committed any infirmity in holding that the accident resulting in the death of the deceased was caused due to rash and negligent driving by the driver of the bus. It may be noted that the genuineness of the F.I.R. was not challenged from the side of the appellants. The appellants have utterly failed to either to substantiate its contention that the deceased Sushil Kumar himself was responsible for the fault and negligence on his part or to lead any reliable evidence to contradict the testimony of claimant' witnesses. The contentions as raised the learned counsel for the appellant-Insurance Company are not acceptable for the reasons detailed above as well as in view of the Apex Court judgment referred to above.

Having considered the entire evidence brought on record from all the four corners, I find that the Tribunal has rightly held that the death of the deceased was caused due to negligence on the part of the driver of the vehicle, who negligently started the bus thereby crushing the deceased mechanic under the wheels.

In this appeal, the Insurance Company has not challenged the quantum of compensation, except the penal rate of interest in default of payment @ 18% per annum.

In view of the discussion aforesaid, the appeal preferred by the Insurance Company lacks merit and is liable to be dismissed on merit.

It was urged by the learned counsel for the Insurance Company-appellant that the rider of interest @ 18% per annum awarded by the learned Tribunal is highly excessive, which may be suitably reduced taking into consideration the declining trend in the present bank rate of interest. Taking into consideration the facts and circumstances of the case and following the ratio of the Apex Court Judgment in the case of ***Managing Director TNSTC Ltd. Vs. K.I. Bindu and others [(2005) 8 SCC Page 473]*** on the point of grant of interest, I am of the view that to meet the ends of justice, the claimant shall be entitled to simple interest @ 9% per annum instead of 18% from the date of filing of claim petition till the date of payment. To this extent the impugned order stands modified.

The appeal is hereby dismissed on merit. However, the claimants shall be entitled to get simple interest on the compensation amount @ 9% per annum from the date of claim petition till payment. The impugned judgment and award dated 1-2-1990 is modified to that extent. No order as to costs.

The amount in deposit with this Court, if any, shall be transmitted to the Motor Accident Claims Tribunal concerned for being paid to the claimants as directed by the learned Tribunal.

(B.S.Verma, J.)

RCP